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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 722

STANDARD DREDGING CORPORATION, APPELLANT

v.

FRIEDA S. MILLER, INDUSTRIAL COMMISSIONER, ET A

No. 723

INTERNATIONAL ELEVATING COMPANY, APPELLANT

v.

FRIEDA S. MILLER, INDUSTRIAL COMMISSIONER, ET AL.

ON APPEALS FROM THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

In No. 722 the findings of fact and decision of the Referee of the Department of Labor of the State of New York (R. 5–9), and of the Unemployment Insurance Appeal Board of the Depart-

ment of Labor of the State of New York (R. 2–3), are unreported. The opinion of the New York Supreme Court, Appellate Division, Third Judicial Department, is reported at 263 App. Div. 773. (R. 104-105.) The opinion of the Court of Appeals of the State of New York is reported *sub nom. Claim of Cassaretakis,* 289 N. Y. 119. (R. 107–115.)

In No. 723, findings of fact and decision of the the Referee of the Department of Labor of the State of New York (R. 10–13) and of the Unemployment Insurance Appeal Board of the Department of Labor of the State of New York (R. 3–8) are unreported. The opinion of the New York Supreme Court, Appellate Division, Third Judicial Department, is reported at 262 App. Div. 654. (R. 55–57.) The opinion of the Court of Appeals (R. 60–69) is reported *sub nom. Claim of Cassaretakis,* 289 N. Y. 119.

JURISDICTION

The Court of Appeals rendered its decisions in both cases on October 15, 1942, reversing the orders of the Appellate Division. On October 22, 1942, on remittitur from the Court of Appeals, the order of reversal of that court was made the order of the Appellate Division, Third Department. (No. 722, R. 117–118; No. 723, R. 69–70.) The applications for appeal were filed December 30, 1942. On March 8, 1943, this Court

noted probable jurisdiction. The jurisdiction of this Court rests on Section 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the New York State Unemployment Insurance Law, as applied to maritime employment within the geographical boundaries of the State, contravenes Article III, Section 2 of the Constitution of the United States or Section 1607 (c) (4) of the Internal Revenue Code.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitution of the United States of America:

> ARTICLE III.
>
> Section 2. The Judicial Power shall extend * * * to all Cases of admiralty and maritime Jurisdiction; * * *

Internal Revenue Code:

> SEC. 1600. RATE OF TAX [As amended by § 608, Social Security Act Amendments, 1939, c. 666, 53 Stat. 1360].
>
> Every employer (as defined in section 1607 (a)) shall pay for the calendar year 1939 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607 (b)) paid by him during the calendar year with respect to employment

(as defined in section 1607 (c)) after December 31, 1938. (U. S. C., Title 26, Sec. 1600.)

* * * * *

SEC. 1607. DEFINITIONS [As amended by § 614, Social Security Act Amendments, 1939].

When used in this subchapter—

* * * * *

(c) *Employment.*—The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—

* * * * *

(4) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

* * * * *

(U. S. C., Title 26, Sec. 1607.)

McKinney's Consolidated Laws of New York Annotated, Book 30, Labor Law: [Words in brackets were eliminated on March 27, 1941, N. Y. Laws, 1941, c. 169 and c. 669.]

ARTICLE 18.—UNEMPLOYMENT INSURANCE FUND

§ 502. *Definitions.*

As used in this article:

1. "Employment," except where the context shows otherwise, means any employ-

ment under any contract of hire, express or implied, written or oral, including all contracts entered into by helpers and assistants of employees, whether paid by employer or employee, if employed with the knowledge actual or constructive of the employer [in which all or the greater part of the work is to be performed within this state].

(1) The term "employment" shall include an individual's entire service, performed within or both within and without this state if: (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not any state in which some part of the service is performed, but the individual's residence is in this state.

(2) Services performed within this state but not covered under paragraph (1) of this subdivision shall be deemed to be employment subject to this article if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or the federal government.

(3) Services not covered under paragraph (1) of this subdivision and performed entirely without the state, with re-

spect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this article if the individual performing such service is a resident of this state and the commissioner approves the election of the employer for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this article.

(4) Service shall be deemed to be localized within the state if

(a) the service is performed entirely within the state; or (b) the service performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

But for the purposes of this article, "employment" shall not include: (1) [Employment as a farm laborer];

(2) Employment by an employer of his spouse or minor child;

(3) Employment as a golf caddy;

(4) Employment, after June thirtieth, nineteen hundred thirty-nine, with respect to which unemployment compensation is payable under the federal railroad unemployment insurance act (52 stat. 1094);

* * *

STATEMENT

In 1935 Congress enacted a program of social security legislation. Among the provisions of the Social Security Act is Title IX, imposing a federal unemployment tax upon employers, with certain exceptions, measured by the total wages paid by such employers. Title IX, now Sections 1600–1611 of the Internal Revenue Code, was enacted for the purpose of inducing the various states to enact unemployment compensation insurance laws for the benefit of employees. To accomplish this purpose, Title IX provides that employers subject to the federal tax shall be credited up to 90 percent of such tax for all amounts contributed by them to state unemployment insurance funds. (Sec. 1601.) The federal act sets up no unemployment insurance plan and, with the exception of a few general standards (Sec. 1602), leaves the states free to establish whatever plan they desire. Among exemptions from the federal tax is that of "Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States". (Sec. 1607 (c) (4).)

The State of New York enacted its unemployment insurance law to become effective on January 1, 1936. McKinney's Consolidated Laws of New York Annotated, Book 30, Labor Law, Article 18, Secs. 500–539. Under that law, an unemployment insurance fund (Sec. 514) is created, to be administered as a trust fund and to be used solely

to pay benefits to employees temporarily unemployed under certain prescribed conditions. See Sections 504, 505, 506, 507. The state is liable to the employees for the payment of the benefits provided (Sec. 503) and an administrative procedure is established for adjudication and payment of claims by the state (Sec. 510, 518, 530–537). An excise tax is imposed by the state upon all employers subject to the Act. (Sec. 515.) The amount of the tax is measured by the amount of wages paid for the services covered by the Act. (Sec. 516.) Section 502 defines the employment or services covered by the Act. That section provides that the protected employment shall include an individual's entire services performed within and without the state if (a) the service is localized in the state, or (b) if the service is not localized in any state but some service is performed in the State of New York and the base of operations is in the state.[1] Exemptions from the excise tax are provided for farm labor, golf caddies, and employment by an employer of his spouse or minor child. No exemption relating to maritime employment is provided.

The present appeals involve two claims filed by employees pursuant to the New York State Unemployment Insurance Law.

[1] The New York Act also provides that employment shall include work not localized in any state but some of which is performed in New York, if the work is not based or controlled within any state in which some part of it is performed, where the individual's residence is in New York.

In case No. 722, the undisputed facts disclose that Mike Cassaretakis, the claimant, was employed by the Standard Dredging Corporation, a New York corporation, from March 15 to August 15, 1939. During that period the company operated the dredge "Miami" at Gravesend Bay, wholly within the territorial borders of the State of New York. The dredge, leased or chartered from a New Jersey corporation, was employed in the execution of a contract with the City of New York Park Department which required that material be pumped from beneath the surface of the Bay to fill the shoreline and thereby make possible the extension of a public highway. The "Miami" is not a self-propelled dredge and in the course of the highway project was moved from time to time by means of cables and spuds. Cassaretakis was assistant cook, dishwasher, and waiter taking care of the needs of the dredge personnel, and during the last few weeks of his employment also served as a watchman. (R. 5–6.)

The Referee who heard the case in the first instance found that the "Miami" was engaged in construction work intimately connected with land operations rather than navigation and that Cassaretakis and all other employees on the "Miami" were not "members of a crew" of a vessel. He, therefore, ruled that their employment was covered by the state unemployment insurance law and that the employer was liable for

contributions to the state fund. (R. 7–8.) The State Unemployment Insurance Appeal Board affirmed the Referee (R. 2–3). The Appellate Division of the New York Supreme Court reversed the Appeal Board. That court ruled that Cassaretakis was a member of a crew of a documented vessel operating on navigable waters and that his employment was subject exclusively to the jurisdiction of the Federal Government, under Article III, Section 2 of the Constitution of the United States, and Section 1607 (c) (4) of the Internal Revenue Code. (R. 104–105.)

In case No. 723, the claimant, Joseph Bergen, was in the employ of the International Elevating Company during 1938 and 1939. That company operates floating elevators on the navigable waters of New York harbor and tributary streams. It is conceded that a greater portion of these operations is within waters adjacent to the State of New York. The function of the elevators is to transfer bulk grain to oceangoing vessels. The grain is brought to New York harbor from other ports and it is ultimately destined for delivery in foreign ports. The elevators are self-propelled vessels documented under the laws of the United States and registered at their home port of New York City. The elevators have two general classes of employees: (1) a full crew for navigation of the vessel; (2) grain workers who operate the elevator machinery for the transfer of grain

from one vessel to another. The claimant, Bergen, was a grain worker performing the duties of a "header" or "trimmer". (R. 3–4, 10–12.)

The Referee found that Bergen was not a member of the crew of a vessel and held that application of the state unemployment insurance law to him would not contravene the Federal Constitution requiring uniformity of admiralty laws. He, therefore, ruled that Bergen's employment was covered by the state law and that his employer was liable for contributions to the state fund. (R. 13.) The Appeal Board affirmed the Referee, expressly finding that Bergen was not a member of the crew of the vessel (R. 8). The Appellate Division of the New York Supreme Court reversed on the ground that claimant's employment was maritime and that the state law could not be construed to interfere with the exclusive maritime jurisdiction vested in the Federal Government by Article III, Section 2 of the Constitution (R. 55–57).

These two cases with four others were appealed to the Court of Appeals of the State of New York and decided by that court in a single opinion. The Court of Appeals held that Article III, Section 2, did not prohibit application of the New York statute to maritime employment generally, and that Congress had not preempted the field by enactment of Section 1607 (c) (4), exempting from the federal excise tax the employment of indi-

viduals as officers or members of crews of vessels on the navigable waters of the United States.

In addition to the two cases here involved, the Court has taken jurisdiction of two other cases covered by the same decision of the New York Court of Appeals. *Matton S. S. Co.* v. *Miller,* No. 783; *Lake Tankers Corp.* v. *Miller,* No. 813. The latter two cases, and also *Great Lakes Dredge & Dock Company* v. *Charlet,* No. 849 (which arises under the Louisiana unemployment compensation statute), involve employees who were unquestionably members of crews. Although it is arguable, in view of the exemption in Section 1607 (c) (4) for crew members, that they occupy a different status from maritime workers not so engaged, we do not think there is any sound differentiation between them. Accordingly, except as otherwise indicated, this brief may also be treated as applicable to the issues presented in Nos. 783, 813, and 849.

SUMMARY OF ARGUMENT

I

The New York Unemployment Insurance Law, as applied to maritime employment within the state, does not contravene Article III, Section 2, of the Constitution of the United States, which provides that the federal judicial power shall extend "to all Cases of admiralty and maritime Jurisdiction."

Under the decisions of this Court the states are free to extend their legislative authority to maritime operations within their borders so long as the legislation does not work material prejudice to the characteristic features of maritime law, nor interfere with its uniformity in international and interstate relations, and provided it does not contravene any act of Congress. The rule is that the state legislation is valid unless it modifies the substantive maritime law or displaces or substantially alters the remedies peculiar to admiralty jurisdiction.

The New York Unemployment Insurance Law does not affect the substantive features of admiralty law, for it in no way alters the relationship between maritime employer and employee. The rights, obligations, and liabilities of each party to the maritime employment contract remain unchanged. Neither has any new or substituted rights against, or obligations to, the other. The statute merely places an excise tax on the employer for which he is liable to the state, and gives the employee, under specified conditions, a right to receive benefits from a state fund. Moreover, there is no interference with the uniformity of maritime law in its international or interstate relations, since the substantive features of admiralty are in no way affected and the State of New York seeks in these cases only to apply its law to maritime employment substantially within its own borders.

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The decisions of this Court invalidating state workmen's compensation acts, as applied to maritime employment upon navigable waters within the states, are not controlling. In those cases, the Court concluded that, because the common law rights and liabilities of maritime employer and employee with respect to injuries received in the course of employment were abolished and statutory remedies based on liability without fault were substituted, workmen's compensation statutes modified the substantive law of admiralty and interfered with its uniform operation. Those features are not present in the New York unemployment insurance act.

If the Court deems that the two types of statutes are not distinguishable, we believe that it should reexamine, and overrule or narrow the effect of, the decisions respecting state workmen's compensation statutes. Although such cases may still be legitimately considered as guides to the interpretation of the Longshoremen's and Harbor Workers' Compensation Act, their implications need no longer be followed as constitutional doctrine. At the very least, their authority should not be extended into a new field.

II

By enactment of Section 1607 (c) (4) of the Internal Revenue Code, Congress has not preempted the field. Section 1607 (c) (4) was origin-

ally a part of Title IX of the Federal Social Security Act of 1935. Title IX is merely a taxing statute, designed to encourage the states to establish their own systems of unemployment insurance. Title IX sets up no rival federal system. The legislative history discloses that Congress intended to leave the states free to enact systems of their own design. There are no federal requirements as to what employment the state laws shall cover, and most of the states have departed in numerous respects from the tax coverage of the federal statute. Although Section 1607 (c) (4) exempts from the federal unemployment insurance excise tax "Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States," the states are not expressly or by implication precluded from insuring such employment if they elect to do so. Since there is no conflict between the state and federal legislation, the state law is valid.

ARGUMENT

I

The New York State Unemployment Insurance Law, as Applied to Maritime Employment Within the State, Does Not Contravene Article III, Section 2, of the Constitution of the United States

Article III, Section 2, of the Constitution provides that the federal judicial power shall extend

to all cases, in law and equity, arising under the Constitution and laws of the United States and "to all Cases of admiralty and maritime Jurisdiction".

From this grant of judicial power it has been implied that the Constitution grants to Congress the legislative power to make substantive modifications of the admiralty and maritime law as it existed at the time the Constitution was adopted. *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375; *Lindgren* v. *United States,* 281 U. S. 38; *Detroit Trust Co.* v. *The Barlum,* 293 U. S. 21; *Butler* v. *Boston Steamship Co.,* 130 U. S. 527; *In re Garnett,* 141 U. S. 1. See also *The Western Maid,* 257 U. S. 419, 432.

Although Congress is held to have paramount power, it has been uniformily recognized that general maritime law may, within limits, be changed, modified or affected by state legislation. The rule was clearly stated by this Court in *Just* v. *Chambers,* 312 U. S. 383, where the Court said (p. 389):

> * * * a State, in the exercise of its police power, may establish rules applicable on land and water within its limits, even though these rules incidentally affect maritime affairs, provided that the state action "does not contravene any acts of Congress, nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony

> and uniformity in its international and interstate relations."

And again (p. 391):

> This criterion * * * is a broad recognition of the authority of the States to create rights and liabilities with respect to conduct within their borders, when the state action does not run counter to federal laws or the essential features of an exclusive federal jurisdiction. See *Minnesota Rate Cases*, 230 U. S. 352, 402–410. * * *

These principles have been frequently applied so as to uphold state regulation of many matters subject to the federal maritime jurisdiction. The cases are summarized *infra*, pages 19–23. Under the test enunciated in *Just* v. *Chambers, supra*, there can be little question but that state unemployment compensation laws may be applied to maritime employees. Doubt exists, we believe, only because of the decision of this Court in *Southern Pacific Company* v. *Jensen*, 244 U. S. 205, and the cases following it, which held that the states had no constitutional power to apply their workmen's compensation laws to maritime employees.

The appellants in the present cases have maintained the position that the rule applied in the *Jensen* line of decisions to invalidate state workmen's compensation laws also invalidates state unemployment insurance laws. It is the view of the Government (a) that the New York unemployment insurance law does not interfere with

the characteristic features and uniformity of admiralty law which Article III, Section 2, has been held to require, regardless of the validity of the application of that rule to state workmen's compensation cases, and (b) that if this Court deems that state unemployment insurance laws and workmen's compensation laws cannot be differentiated, the *Jensen* line of decisions should be reexamined. We proceed to elaboration of those contentions.

A. THE NEW YORK UNEMPLOYMENT INSURANCE LAW NEITHER AFFECTS ANY CHARACTERISTIC FEATURES NOR INTERFERES WITH THE UNIFORMITY OF ADMIRALTY AND MARITIME LAW

At the outset, it should be pointed out that the New York unemployment insurance law does not in any way disturb the substantive features of maritime or admiralty law. It has no effect upon maritime contracts. It does not alter or affect any rights or liabilities imposed by admiralty law upon either the employer or the employee.

The statute imposes an excise tax payable by employers upon the right or privilege of entering into the employment relationship. See *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495; *Steward Machine Co.* v. *Davis*, 301 U. S. 548. This Court has affirmed the constitutionality of the excise tax imposed by this very statute (*Chamberlin* v. *Andrews*, 299 U. S. 515, affirming 271 N. Y. 1), as well as similar excise taxes imposed by other states for the support of their unemployment insurance funds. *Carmichael* v.

Southern Coal & Coke Co., supra. The employer is made liable to the state, just as he is liable for any other validly imposed tax. The statute takes away from a maritime employer no right conferred upon him by admiralty law. In fact, it deprives him of no right whatever. See *Beeland Wholesale Co.* v. *Kaufman,* 234 Ala. 249. Moreover, it gives the employee no right of action against the employer, and thus imposes no new liability in contract upon the latter. The employee's only right in the event he becomes unemployed is to assert his claim against the State of New York for the benefits provided by law. In short, the statute does not in any manner affect the rights and obligations fixed by the maritime contract itself. *Beeland Wholesale Co.* v. *Kaufman, supra.*

It has repeatedly been recognized that state taxing statutes, otherwise valid, are not rendered invalid because they have an incidental or indirect effect upon matters over which the Federal Government has been granted legislative power. Past decisions of this Court have sustained the application of numerous state tax statutes to maritime operations within the states. One engaged in maritime commerce may be lawfully subjected to a state tax upon the property employed in that business. *Old Dominion S. S. Co.* v. *Virginia,* 198 U. S. 299, 305; *Ayer & Lord Co.* v. *Kentucky,* 202 U. S. 409, 421. State franchise

taxes upon towing companies have uniformly been upheld. *Cornell Steamboat Co.* v. *Sohmer*, 235 U. S. 549. Taxes upon shipping may be laid by the state without affecting the characteristic features of admiralty law or its required uniformity.[2] *Transportation Co.* v. *Wheeling*, 99 U. S. 273. This Court has likewise approved tolls levied upon ships using state-improved waterways, without regard to the fact that the vessels were engaged in interstate and foreign trade. *Sands* v. *Manistee River Imp. Co.*, 123 U. S. 288; *Huse* v. *Glover*, 119 U. S. 543; *Escanaba Co.* v. *Chicago*, 107 U. S. 678. Perhaps even more significantly, in *Wiggins Ferry Co.* v. *East St. Louis*, 107 U. S. 365, this Court sustained a municipal license fee imposed upon ferry operators, even though the amount of the fee was measured by the number of vessels maintained in operation on navigable waters. See also *Packet Co.* v. *Keokuk*, 95 U. S. 80, permitting municipal wharfage charges based on ship tonnage. The levy of an excise tax on the privilege of employing the services of individuals in maritime operations no more alters the substantive law of admiralty or interferes with the uniformity of its operation in international or inter-

[2] It may also be noted that the validity of state taxation of marine insurance corporations, whose contracts are maritime in nature (*Insurance Company* v. *Dunham*, 11 Wall. 1; *Aetna Ins. Co.* v. *Houston Oil & Transport Co.*, 49 F. 2d 121 (C. C. A. 5th)) appears never to have been challenged in this Court.

state aspects than do the taxes whose validity has been upheld.

This Court has already held that excise taxes levied upon employers engaged in interstate commerce by states for the support of their unemployment insurance funds are not violative of the commerce clause. *Perkins* v. *Pennsylvania,* 314 U. S. 586, affirming 342 Pa. 529. This decision rested on Section 1606 (a) of the Internal Revenue Code, which provides that persons shall not be relieved from compliance with state unemployment insurance laws on the ground that they are engaged in interstate or foreign commerce. Many maritime workers are, of course, so engaged, and it is unlikely that Congress would have differentiated in its intention as to the taxing power of the states between employees engaged in interstate or foreign commerce generally and those engaged in maritime activities.

In fields other than taxation, state legislation affecting maritime operations and even supplementing the rights and remedies available under the traditional admiralty law has been upheld. For example, state laws concerning pilotage, although constituting regulations of interstate and foreign commerce as well as of maritime matters, are valid until Congress legislates. *Cooley* v. *Board of Wardens,* 12 How. 299; *Steamship Co.* v. *Joliffe,* 2 Wall. 450, 459; *Ex parte McNiel,* 13 Wall. 236, 240; *Wilson* v. *McNamee,* 102 U. S. 572;

Olsen v. *Smith,* 195 U. S. 332, 341; *Anderson* v. *Pacific Coast S. S. Co.,* 225 U. S. 187. Especially significant, because one of the instant cases (No. 723, *International Elevating Company* v. *Miller*) involves the same kind of business enterprise, is the case of *Budd* v. *New York,* 143 U. S. 517, which sustains the validity of state regulation of rates charged by floating elevators in territorial and harbor waters.

This Court has also consistently upheld the application of additional and supplemental state remedies to admiralty jurisdiction. In *The Loitawanna,* 21 Wall. 558, liens granted by state law to material men for supplies furnished to vessels in their home ports were upheld. Similarly, the contention that Article III, Section 2, prohibits state legislation providing liens against vessels both for the cost of repairs and for wages of masters has been rejected. *The J. E. Rumbell,* 148 U. S. 1. Numerous state "death statutes," granting a cause of action to the estate of a person dying from tort injuries received on navigable waters, have been held not to alter the substantive features of admiralty or interfere with its uniformity of operation. *The Hamilton,* 207 U. S. 398; *Western Fuel Co.* v. *Garcia,* 257 U. S. 233; *Gt. Lakes Co.* v. *Kierejewski,* 261 U. S. 479. See also *Vancouver S. S. Co.* v. *Rice,* 288 U. S. 445; *The Harrisburg,* 119 U. S. 199, 213. The same conclusion has been reached with respect to similar

state statutes providing for the survival of a cause of action after death of a person who suffered a tortious injury on navigable waters. *Steamboat Co.* v. *Chase,* 16 Wall. 522; *Sherlock* v. *Alling,* 93 U. S. 99. Only recently in *Just* v. *Chambers,* 312 U. S. 383, this Court held that a Florida statute providing that an action for personal injuries shall survive the death of a tort feasor is enforceable in a court of admiralty where the accident had occurred on navigable waters within the territorial boundaries of the state. Contentions that the statute violated Article III, Section 2, by creating a liability unknown to admiralty and by interfering with the uniform operation of maritime law were rejected. Other instances in which the validity of state-created rights and local regulations have been upheld as to maritime relations are cited in *The City of Norwalk,* 55 Fed. 98, 106–107 (S. D. N. Y.). See also *Grant Smith-Porter Co.* v. *Rohde,* 257 U. S. 469, 477–478; *Gloucester Ferry Co.* v. *Pennsylvania,* 114 U. S. 196, 204, 214–217; *United States* v. *Bevans,* 3 Wheat. 336.

The statutes involved in all the above-cited cases affected the conduct of business operations on navigable waters or supplemented or even created new *in personam* rights and liabilities relating to maritime operations. Yet all were held not to affect the characteristic features of admiralty jurisdiction or interfere with the uniformity of its operation within the meaning of those terms as read into Article III, Section 2.

Until the decision of this Court in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, few state statutes relating to maritime operations had been invalidated. Apart from decisions holding state legislation invalid because it conflicted with existing federal legislation,[1] earlier decisions invalidating state legislation under Article III, Section 2, were almost wholly limited to statutes seeking to confer upon state courts the exclusive remedies peculiar to admiralty jurisdiction. *The Moses Taylor*, 4 Wall. 411; *The Hine* v. *Trevor*, 4 Wall. 555; *The Belfast*, 7 Wall. 624; *The Glide*, 167 U. S. 606, 616 *et seq.*; *The Roanoke*, 189 U. S. 185; see also *Workman* v. *New York City, Mayor &c.*, 179 U. S. 552; *Hendry Co.* v. *Moore*, No. 60, decided February 8, 1943.

State workmen's compensation laws, as applied to maritime employment, were invalidated in the *Jensen* case and those following it because this Court was of the view that they were inconsistent with the characteristic substantive features of admiralty law. Regardless of the correctness of that conclusion, we believe those decisions to be wholly inapplicable in determining the validity of state

[1] The few cases holding state legislation with respect to maritime matters invalid because of conflict with federal laws seem to have been concerned almost exclusively with the commerce clause rather than with Article III, Section 2, although the latter might perhaps also have been invoked. *Gibbons* v. *Ogden*, 9 Wheat. 1; *Sinnot* v. *Davenport*, 22 How. 227; *Moran* v. *New Orleans*, 112 U. S. 69; see also *Harman* v. *Chicago*, 147 U. S. 396.

unemployment insurance laws. State workmen's compensation statutes create rights and liabilities *between the parties* to a maritime contract which this Court held in the *Jensen* case not to be a part of the general admiralty law of the United States. (But see the dissent of Mr. Justice Brandeis in *Washington* v. *Dawson & Co.*, 264 U. S. 219, 232.) More significantly, those laws substituted new rights and liabilities for the traditional rights and liabilities in tort which had long been recognized in admiralty. They modified or set aside the traditional maritime rights and obligations and replaced them with the rule of employer liability regardless of fault. See, for example, Sections 7673 and 7679 of the Washington Workmen's Compensation Act, involved in *Washington* v. *Dawson & Co., supra,* which expressly withdraw from private controversy the "common law system governing the remedy of workmen against employers" and "in lieu of any and all rights of action", substitute scheduled compensation awards. Such statutes, the court held, were invalid as applied to maritime employment within the various states "because their provisions were held to modify or displace essential features of the substantive maritime law." *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 124.

Unemployment insurance laws, such as the New York statute, do not in any way affect the relationship between employer and employee under a maritime contract. The rights, obligations, and liabili-

ties of each party with respect to the other "remain untouched and unchanged and still wholly under the aegis of admiralty law; no subtraction, addition or substitution takes place." *Great Lakes Dredge & Dock Co.* v. *Charlet,* 43 F. Supp. 981, 987 (E. D. La.), affirmed by the Fifth Circuit, February 11, 1943, certiorari granted April 5, No. 849. The employer pays taxes to the state, regardless of whether his employees draw any compensation. The state pays benefits to the employees, irrespective of whether the employer pays his taxes. Furthermore, even if the unemployment compensation plan be treated as a unit, the fundamental test devised by this Court for determining the validity of state legislation under Article III, Section 2, is whether the legislation modifies the substantive maritime law or displaces or substantially alters existing remedies enforceable in admiralty. *Red Cross Line* v. *Atlantic Fruit Co., supra,* p. 125. If the state legislation accomplishes none of these results, its application to matters within admiralty jurisdiction is valid. The maritime law never has been concerned one way or the other with unemployment compensation. It had no rule or provision on the subject, prohibitory or otherwise. Nor do we think that the silence of the maritime law can be said to constitute an implied prohibition. Thus, as previously indicated, where admiralty jurisdiction offers no substantive right or procedural remedy whatever, the application of

state legislation to maritime matters within the State is permissible. See, e. g., *The Hamilton, supra; Just* v. *Chambers, supra.*

The appellant in No. 723 contends in its brief (pp. 11–13, 17–18) that, if the states are permitted to apply their unemployment insurance laws to maritime employment, the uniformity and harmony claimed to be essential to maritime matters will be disrupted and maritime commerce will be burdened by discordant and conflicting legislation. Specifically, it is urged that appellant may be liable for excise taxes levied by both the State of New York and the State of New Jersey on account of the same employment. We believe that this threat is more theoretical than real. In determining whether such double taxation is likely to occur it is significant that of 51 state and territorial jurisdictions which have unemployment insurance laws, 48 have adopted substantially the same definition of employment for jurisdictional purposes.[4] See 1 C. C. H., Unemployment Ins. Serv., paragraph 993, pp. 191–192. Thus, it may

[4] Only the States of New Hampshire and Vermont and the District of Columbia have jurisdictional provisions which may be considered substantially different from those of the majority of the States and territories. Even the provisions of these three jurisdictions do not extend their statutes to employment outside their geographical boundaries unless a greater part of the work is performed within their boundaries or unless the base of operations or control is located therein. 1 C. C. H., Unemployment Ins. Serv., paragraph 993, pp. 191–192.

be said that the states themselves have established an essentially uniform standard for determining the scope of their unemployment insurance laws, thereby effectively minimizing the possibility of conflict or duplication.

The claims involved in the cases here on appeal embrace the years 1938 and 1939. At that time, the New York statute extended its coverage to employment "in which all or the greater part of the work is to be performed within this state." (Section 502, pp. 4–5, *supra.*) Theoretically, such a provision might have led to some overlapping of jurisdiction since the New Jersey law (which contained the standard definition) covers employment when some of the service is performed within that state and when that state is also the base of operations. (New Jersey Unemployment Compensation Law, Section 43:21–19.) But there is no claim that New Jersey ever asserted jurisdiction over any part of the employment here involved, or that there has in fact been any conflict or discord. Indeed, the New Jersey law (Section 43:21–19) exempts from unemployment insurance coverage members of crews of vessels on navigable waters of the United States, and state administrators may have construed that exemption to include all employees of the floating elevators of appellant, especially since the Treasury Department in 1937 construed the identically phrased exemption in Title IX of the Federal statute to exempt floating elevator employees. (No. 723, R. 40, 41, 50–52.)

In any event, the New York law was amended in 1941 by striking from the definition of employment the phrase "in which all or the greater part of the work is to be performed within this state." (Laws of New York, 1941, c. 169, effective March 27, 1941.) Since that amendment, the jurisdictional tests of the New York and New Jersey laws have been substantially identical, thereby eliminating any possible *statutory* conflict. Under the present statutes each state law applies primarily to its own localized employment and to employment based or controlled within the state. Both the New York and the New Jersey statutes[5] further assure that their coverage of any other services performed within the state will not also be covered under the laws of another state by expressly providing for coverage *only* "if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or the federal government." These provisions demonstrate that the respective state laws have been very carefully drafted so as to avoid any possibility of overlapping.

Appellant, however, insists that interpretations of the same statutory provisions by various state

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[5] New Jersey Laws, 1936, c. 270, sec. 19, New Jersey Stats. Anno., Title 43, c. 21, sec. 19. Twelve of the state laws have this provision. See 1 Prentice-Hall, Unemployment Ins. Serv., paragraph 27,126.1. A number of other state statutes provide for reciprocal arrangements so as to avoid overlapping. *Ibid.*

administrative bodies may be in conflict, and thereby bring about an overlapping of coverage. This, of course, could occur, although the conflicting interpretations could not be deemed final until and unless approved by the highest court of each state, and by this Court if any federal question were thought to be presented. But appellant has been unable to point to any examples of double liability either in the maritime field or in the broader field of interstate commerce in which Congress specifically authorized the states to act. Internal Revenue Code, Section 1606 (a). Most of the State unemployment insurance laws have been in effect since 1936. So far as we have been able to ascertain no litigation has arisen which involves the levy of assessments upon the same employment by more than one state. Nor have we found any administrative rulings imposing double liability upon employers by reason of the same services. This is true of non-maritime services performed in more than one state, as well as of maritime employment. Indeed, since all but four of the states exempt some types of maritime employment (e. g., service as an officer or member of a crew of a vessel on the navigable waters of the United States, see 1 C. C. H., Unemployment Ins. Serv., paragraph 993A, p. 195–2), conflicts and overlapping are much less likely to arise with respect to maritime employment than with respect to non-maritime interstate employment.

We may assume that the application of two state unemployment compensation laws to the same employment would so burden the uniformity and harmony of maritime law as to be invalid—although this is not at all clear (cf. *Curry* v. *McCanless*, 307 U. S. 357; *Texas* v. *Florida*, 306 U. S. 398, and the cases in the Dorrance Estate Tax litigation, cited at 306 U. S. 411). But when the state statutes have obviously been prepared so as to avoid such overlapping, and when double coverage has not been shown to exist in any specific cases, the possibility that it might conceivably occur is far too speculative and weak a factual foundation upon which to support a holding that the application of state unemployment compensation laws to maritime matters is always so burdensome as to be invalid. The overlapping would occur, at most, only in rare cases, and the general validity of the law should be determined by the rule and not by the exception. Possibly when two states actually do seek to impose two unemployment taxes on the same maritime employment, the taxpayer should be able to obtain protection against one of the exactions. But no such claim is made here, and the Court may deal with that situation when—and if—it arises.

B. THE *JENSEN* CASE SHOULD NOT BE REGARDED AS AUTHORITATIVE IN THE UNEMPLOYMENT COMPENSATION FIELD

For the reasons indicated above, (pp. 24–31), we think that the status of workmen's compen-

sation laws as applied to maritime workers may be differentiated from that of unemployment compensation statutes. If the Court is not satisfied with the distinctions suggested, we believe that the *Jensen* case should be limited as an authority to the precise question there before the Court, or overruled insofar as it stands for constitutional doctrine.

We recognize that in *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244 and *Davis* v. *Department of Labor and Industries*, 317 U. S. 249, this Court refused to overrule the *Jensen* case because of the confusion which such a decision would entail in the field of workmen's compensation for maritime workers. The Longshoremen's and Harbor Workers' Compensation Act was enacted on the basis of this Court's holding in the *Jensen* case, and that statute would be nullified if the effect of the *Jensen* decision as applied to workmen's compensation were eliminated. We do not think, however, that the Court is precluded from disregarding the *Jensen* case as a *constitutional* authority by the need for preserving its efficacy in the workmen's compensation field. Since the Longshoremen's and Harbor Workers' Act was predicated on the *Jensen* decision, the principles of that case may be accepted "as the measure by which Congress intended to mark the scope of the Act they brought into existence." *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S., at 250. The de-

cision may thus be said in substance to have been incorporated by reference (see *Davis* v. *Department of Labor and Industries,* 317 U. S., at 256) into the Longshoremen's Act. It can remain as a guide to the interpretation of that statute, even though its constitutional implications are rejected.

In view of the absence of any expression of approval of the *Jensen* case in the *Parker* and *Davis* opinions,* we read those decisions as manifesting an unwillingness to let the *Jensen* decision have any greater force than is necessary to maintain the effectiveness of the Longshoremen's and Harbor Workers' Act. The question here is whether the *Jensen* case should be given an expanded application to unemployment compensation laws. Even if the case should not be overruled, we think that its effect as an authority may well be limited to the type of statute there before the Court.

We believe the unsoundness of the *Jensen* decision is demonstrated by the dissenting opinions in that case and in *Knickerbocker Ice Company* v. *Stewart,* 253 U. S. 149, 167, and *Washington* v. *Dawson & Co.,* 264 U. S. 219, 228. Furthermore, we think the case inconsistent in reasoning with this Court's subsequent decision in *Just* v. *Chambers,* 312 U. S. 383, since we find no satis-

* In the *Davis* case Mr. Justice Frankfurter, concurring, referred to the *Jensen* case as "that ill-starred decision" (317 U. S., at 259), and the Chief Justice indicated his willingness to overrule the *Jensen* decision (*id.*, at 263).

factory basis for concluding that a state workmen's compensation law is more "hostile to the characteristic features of the maritime law" (312 U. S., at 388) than the state survival statute upheld in the *Just* case. The error in the *Jensen* case, we believe, lies primarily in its application of the formula laid down. Although state laws which "work[s] material prejudice to the characteristic features of the general maritime law or interfere[s] with the proper harmony and uniformity of that law in its international and interstate relations" (244 U. S., at 216) may reasonably be deemed invalid, it is difficult to see why a workmen's compensation act should be held to fall within that class.

II

Title IX of the Federal Social Security Act Does Not Deprive the States of Power To Apply Their Unemployment Compensation Laws to Maritime Employment Within Their Boundaries

We are satisfied for the reasons stated that the states are free to apply unemployment insurance laws to maritime employment within their boundaries unless Congress has already occupied the field by the enactment of conflicting legislation.

We now turn to consider whether Congress has enacted legislation depriving the states of their power to legislate with respect to unemployment insurance for maritime employees. It has been

urged that Title IX of the Federal Social Security Act, now Sections 1600–1611 of the Internal Revenue Code, has occupied the field and has the effect of prohibiting state unemployment insurance legislation in the maritime domain. We believe that Title IX was not intended to have, and in fact does not have, either of these effects.

In the first place, Title IX, which provides for a federal excise tax on employers (with certain exceptions), was enacted by Congress for the purpose of encouraging all the states to enact their own unemployment insurance laws, adapted to the diverse conditions of their industries. S. Rep. No. 628, 74th Cong., 1st Sess., pp. 12, 13. In fact, Congress expressly recognized the need for state legislation to protect all employees, whether engaged in purely local enterprises or commercial enterprises transcending state lines.[7] Title III of the Social Security Act, c. 531, 49 Stat. 620, providing federal funds to assist the states with the cost of administering their insurance acts, is further evidence of the same Congressional purpose. Both Title IX and Title III are expressions on the part of Congress that unemployment insurance legislation is a mat-

[7] Section 1606 (a) of the Internal Revenue Code provides:
"No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce."

ter of local concern which must be dealt with by state legislation.

Moreover, Congress has enacted no statute providing a federal unemployment insurance system for maritime employment. No question of rival federal and state systems is presented. In that sense there is, then, no occupation of the field by Congress. In the present cases, the State of New York has extended its system to cover maritime employment within the State. The Federal Government has established no insurance system for such employees. Title IX is no more than a federal tax upon employment which encourages the states to enact unemployment insurance laws by removing their fear of the competitive disadvantage which would accrue to the industries of a state imposing such laws while other states refrained from doing so. *Carmichael* v. *Southern Coal & Coke Co., supra; Steward Machine Co.* v. *Davis, supra;* Report to the President of the Committee on Economic Security (1935), p. 16. The fact that Congress, in selecting means to achieve this purpose, has imposed a tax on employers is in no way an occupation of the unemployment insurance field. The *sine qua non* of unemployment insurance is, of course, benefit payments to employees, for which the federal statute makes no provision. For these reasons, the provisions of the federal tax imposed by Title IX and the terms of the New York statute are in

no way inconsistent; each can stand without interfering with the other.

The only specific section of the federal law suggested as conflicting with the New York law is Section 1607 (c) (4), which exempts from the *federal* excise tax "Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States." This exemption could not possibly create any conflict with federal policy as to those maritime workers who are not members of crews. Thus it does not affect these two cases—Nos. 722 and 723—in which the employees were reasonably found not to be crew members (*supra,* pp. 9–11), although it might apply to the members of crews involved in Nos. 783, 813, and 849. But in any event, there is no incompatibility between a federal statute exempting the salaries of certain employees from a federal tax and a state law taxing such salaries and allowing such employees unemployment compensation.

The fact that maritime employers are exempt from a federal tax with respect to employment of officers and members of crews of vessels on navigable waters is by no means either a Congressional preemption of the field or a Congressional injunction prohibiting the states from extending the benefits of their own laws to the federally exempt class. The legislative history of the Social Security Act discloses that Congress

had no intention of requiring that the insurance benefit coverage of state laws conform to the tax coverage of the federal law. In both houses of Congress, the Committee reports on the legislation emphasize the fact the federal tax act was not designed to impose any pattern of unemployment insurance legislation upon the states. Thus, the Senate Committee on Finance states (S. Rep. No. 628, *supra*, at pp. 13–14):

> Except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are left free to set up any unemployment compensation system they wish, without dictation from Washington. The States may or may not add employee contributions to those required from the employers. * * * Likewise, the States may determine their own compensation rates, waiting periods, and maximum duration of benefits. Such latitude is very essential because the rate of unemployment varies greatly in different States * * *.
>
> Under the bill * * * the States will also have freedom of choice with regard to the type of unemployment compensation law they wish to enact. * * *
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> * * * * *
>
> * * * In accordance with the entire spirit of the Social Security Act, we believe that the Federal Government should not attempt to dictate to the States which

> type of unemployment compensation law they should adopt. The amendment * * * will eliminate all such dictation and leave the States free to decide for themselves which type best suits their peculiar conditions.

See also H. Rep. 615, Committee on Ways and Means, 74th Cong., 1st Sess., pp. 8 and 9.

In the Hearings before the Committee on Ways and Means, House of Representatives, on the Economic Security Act, 74th Cong., 1st Sess., the Executive Director of the President's Committee on Economic Security testified (p. 5):

> * * * it [the proposed plan] allows freedom for variations to meet the differing conditions in different States and will make it possible to get the practical experience needed to test the various theories which have been current as to the best type of an unemployment compensation act.

The scheme for federal legislation which would leave the states substantially unrestricted was first proposed by the President's Committee and was accepted by Congress in the legislation finally adopted. The Report to the President of the Committee on Economic Security states (p. 20):

> The plan for unemployment compensation that we suggest contemplates that the States shall have broad freedom to set up the type of unemployment compensation they wish. We believe that all matters

in which uniformity is not absolutely essential should be left to the States.

In accord with this policy, there are no provisions in Titles III and IX requiring that any specified type of employment be included in or excluded from the benefits of the state laws in order to obtain the advantages of federal aid. Had Congress intended to preclude the states from the field of maritime employment within their boundaries the obvious and elementary method of achieving that result would have been to make that exclusion one of the requirements for certification of the state laws.[8] See sec. 1603 of the Internal Revenue Code. That Congress

[8] Indeed, it was proposed by the President's Committee that a separate nationally administered system of unemployment insurance be set up for railroad employees and maritime workers and thereby preclude state coverage of such employment. See Report to the President of the Committee on Economic Security (1935), p. 18. But Congress did not immediately act on that recommendation. In 1938, a federal system of unemployment insurance was established for railroad employees (Railroad Unemployment Insurance Act, c. 680, 52 Stat. 1094; 45 U. S. C. secs. 351–367), but until that time railroad employees were covered by the state acts insofar as the states elected to include them. Various proposals have been made to create a federal plan for maritime employees, but Congress has not yet acted. (See H. R. 9798, 76th Cong., 3d Sess.; H. R. 560, 77th Cong., 1st Sess.; H. R. 5446, 77th Cong., 1st Sess.) Until Congress, by affirmatively establishing a federal system, preempts the maritime domain, the states are free to extend the benefits of their insurance laws to maritime employment within their territories. That no separate national systems were established in 1935 and that exclusion of railroad and maritime employment was not made a condition for approval or certification of state laws, are indications that Congress desired to leave the states free to work

did not do so is the strongest indication that it intended to leave the matter to state determination.

The legislative history suggests two possible reasons for the exclusion of the services of officers and crew members from the federal tax. The Committee Reports offer little explanation of this specific exclusion in Title IX. However, it is significant that Titles II and VIII of the Social Security Act, c. 531, 49 Stat. 620, which set up a *federal* system of old-age retirement pensions, originally excluded "Service performed as an officer or member of the crew of a vessel documented under the laws of the United States." (Sec. 210 (b) (4), 811 (b) (5).) The legislative history of this exclusion discloses that it was prompted by the prospect of administrative difficulties. The Report of the House of Representatives Ways and Means Committee, H. Rep. No. 615, 74th Cong., 1st Sess., states (p. 33):

> The administrative difficulty of following the wages of officers and seamen of crews was regarded as almost insurmountable.[9]
> * * *

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out their own coverage at the outset. With state experience as a basis, Congress could act at a later date to federalize portions of the system which could not be successfully operated by the various states.

[9] Cf. S. Rep. No. 628, 74th Cong., 1st Sess., p. 45.

In 1939, the Social Security Act was amended to include under the federal old-age benefit provisions officers and members of crews of vessels documented under the laws of the United States, 53 Stat. 1384. Sec. 1426 (b) (5) of the Internal Revenue Code now exempts only service on vessels not American if the employee is employed on such vessel when outside the United States.

See also the statement of Representative Vinson, of Kentucky, a member of the Ways and Means Committee. Cong. Record, Vol. 79, Part 6, p. 5903.

The administrative problems envisioned by Congress in applying a nation-wide pension system to members of crews were, if anything, less than those with which the states would be confronted in giving a similar application to unemployment insurance statutes. If Congress was unwilling to saddle a federal agency with such administrative difficulties, it was equally unwilling to do anything which might have the effect of imposing them on the states. For if the wages of members of crews had been subjected to the federal tax under Title IX, the result would have been that although the full tax would have been payable (without the 90% credit to the state), the employees would have received no compensation unless the coverage of the state statute was made equally broad. It was therefore entirely reasonable for Congress to exempt the services of officers and members of crews from the federal tax imposed by Title IX, as well as from the old-age pension system set up under Titles II and VIII. This did not mean, however, that Congress affirmatively desired that the states not grant unemployment compensation to such employees, but merely that it did not wish a state to be subjected to severe administrative burdens unless it was

voluntarily willing to assume them. The exemption thus left the states wholly free to include such employment if they wished; there was merely no federal stimulation to do so.

There was, perhaps, also a second motivating factor in the exemption from Title IX. State workmen's compensation laws had been held unconstitutional as applied to maritime employment. In view of these decisions there was, as the holding of the New York Appellate Division in these cases indicates, reason to doubt the validity of state unemployment insurance statutes similarly applied. We have been able to find only a single reference to this factor in the Congressional hearings, reports, and debates relating to Title IX.[10] During the House debate, Representative Vinson of Kentucky, after adverting to administrative difficulties, said (Cong. Record, Vol. 79, Part 6, p. 5903):

> They [seamen] were exempted in unemployment insurance because there is no power under State law to collect the tax from them. They come under maritime or admiralty jurisdiction, and the State sovereigns have not the power to collect the taxes.

[10] The report of the Social Security Board to Congress, referred to in the brief for appellant in No. 813, p. 20, was made in 1939, and therefore was not a part of the history of the exemption in the Federal Act of 1935. H. R. Doc. No. 110, 76th Cong., 1st sess., p. 16. The 1939 report shows that at that time the Board was of the view that the *Jensen* line of decisions deprived the states of power to apply their unemployment compensation laws to maritime employment.

The following exchange of remarks also occurred (*ibid.*):

> Mr. McCormack. Seamen are exempted under the unemployment-compensation title [Title IX] because of constitutional reasons that do not apply to the contributory annuities [Title VIII].
>
> Mr. Vinson of Kentucky. That is what I just said. They were exempted under Title VIII because of administrative difficulties.

Since Title IX was designed to induce the states to enact unemployment-insurance legislation and to permit employers assessed for contributions under state laws to use such assessments as credits against their federal tax, Congress had good reason for not imposing the federal tax upon employment which might conceivably be beyond the power of state legislation. But, again, it does not follow that Congress occupied or preempted the field by providing the exemption, or that it was affirmatively seeking to exclude the states from extending their laws into the field. Congressional hesitancy to invite the states to enact laws which might contravene decisions of this Court cannot be transmuted into a congressional command that they shall not do so.[11] It remained to the states to

[11] Application of the federal tax to a particular type of employment is, of course, an invitation to the states to extend their laws to the same employment; otherwise, the states would lose the 90% credit and the employees in the taxed employment would not receive unemployment com-

devise unemployment-insurance laws constitutionally applicable to maritime employment within their borders if they chose to insure such employment and, if necessary, carry to the courts the applicability of the workmen's compensation decisions.

We believe, then, that the legislative history of Title IX discloses that the services of officers and crew members were exempted from federal taxation not as a means of prohibiting the states from insuring such employment, but because Congress envisaged that the states might encounter legal and administrative difficulties if they included such employment in their laws pursuant to federal inducement. The reports and debates also reveal that Congress intended to leave the states entirely free to determine the types of employment to be covered and to establish no limitations whatever in that respect. The standards fixed for approval and certification of the state laws contain no requirements with respect to coverage, or any provision prohibiting the application of state laws to employment exempt from the federal tax. Nor would the application of state unemployment-compensation statutes to such employment give rise to

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pensation. This Court so held in *Buckstaff Bath House Co.* v. *McKinley*, 308 U. S. 358. But it does not follow that exemption from the federal tax manifests an intention that the states be prohibited from extending their laws to the exempted employment; the exemption shows only that Congress was not inviting them to reach the exempted occupation.

any practical difficulty in carrying out the scheme of the federal act or in harmonizing the operation of state and federal statutes in the cooperative manner contemplated by Congress.

The States and the Federal Social Security Board have so interpreted Title IX and have acted accordingly. The coverage of the State laws is often, and in many respects, broader than that of the Federal.[12] For example, numerous states have included employers of fewer than eight persons, the number fixed for application of the federal tax.[13] Likewise, many states have included employments expressly exempt from the federal tax of Title IX. In a few instances, there is no state equivalent for the federal exemption for certain types of domestic service.[14] Numerous states apply their laws to casual labor exempt from the federal act.[15] All these state laws have been approved by the Federal Social Security Board, pursuant to Section 1603 of the Internal Revenue Code, for the purpose of taking advantage of the 90 percent credit provided by Title IX of the federal statute. 5 Federal Reg. 69; 6 Fed. Reg. 59; 7 Fed. Reg. 189; 8 Fed. Reg. 191.

The conclusion is inescapable that the federal exemption of services of officers and members of

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[12] The state statutes are compared with the federal in the Appendix, *infra*, pp. 48–56.

[13] See Appendix, *infra*, pp. 48–49.

[14] See Appendix, *infra*, pp. 49–50.

[15] See Appendix, *infra*, p. 50.

crews of vessels on the navigable waters of the United States does not in any manner preclude the State of New York from extending its unemployment insurance benefits to maritime employment.

CONCLUSION

The judgment of the Court of Appeals of the State of New York is correct and should be affirmed.

Respectfully submitted.

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APPENDIX

Comparison of State Unemployment Insurance Laws With Title IX of the Federal Social Security Act (now Internal Revenue Code, Sections 1600–1611), Showing State Coverage of Employment not Reached by the Federal Tax

The provisions of the state statutes are summarized in 1 C. C. H., Unemployment Insurance Service, paragraph 992; 1 P-H, Unemployment Insurance Service, paragraph 20,401. These Services also reprint the state statutes in full and give the official citations.

1. The Federal Act applies only to employers of eight or more employees, Internal Revenue Code, Section 1607 (a). The following States have similar coverage:

Alabama	Michigan	South Carolina
Colorado	Mississippi	South Dakota
Florida	Missouri	Tennessee
Georgia	Nebraska	Texas
Indiana	New Jersey	Vermont
Iowa	North Carolina	Virginia
Kansas	North Dakota	Alaska
Maine	Oklahoma	

Illinois covers employers with 6 or more employees.

The following States cover those with 4 or more employees: California, Connecticut, Kentucky, Louisiana, Maryland, New Hampshire, New York, Oregon, Rhode Island.

Arizona and Ohio cover those with 3 or more employees.

The following cover those with 1 or more employees: Arkansas, Delaware, District of Columbia, Massachusetts, Minnesota, Montana, Nevada, Pennsylvania, Washington, West Virginia, Hawaii.

Utah covers employers whose pay rolls for any quarter total $140 or more.

New Mexico covers those with 2 or more employees or those where pay roll for the year is $450 or more.

Idaho covers those with 1 or more employees if the employer pays $78 or more in wages for a quarter in the calendar year.

Wyoming covers those with 1 or more employees if the pay roll for a quarter in the calendar year totals $150 or more.

Wisconsin covers those with 6 or more employees or, if the records are inadequate, if the employer has a pay roll of $6,000 or more for the calendar year.

2. Internal Revenue Code, Section 1607 (c) (2) exempts—

> Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

New York is the only State which does not exempt domestic service in a private home. Domestic service in a local college club or a fraternity is not exempted in the following States:

Delaware	Iowa	Nevada
District of Columbia	Kentucky	New Jersey
	Mississippi	New York

North Carolina	Vermont	Wyoming
Rhode Island	Washington	
Tennessee	West Virginia	

3. Internal Revenue Code, Section 1607 (c) (3) exempts—

> Casual labor not in the course of the employer's trade or business.

The unemployment compensation laws of the following States do not contain this exemption:

Arizona	Maryland	Rhode Island
Arkansas	Missouri	South Dakota
Delaware	Montana	Tennessee
Idaho	Nevada	Texas
Illinois	New Jersey	Virginia
Iowa	New Mexico	West Virginia
Kansas	New York	Wyoming
Kentucky	North Carolina	
Maine	Oklahoma	

The unemployment compensation laws of the following States contain this exemption in a somewhat limited form: Massachusetts, Ohio, Wisconsin.

4. Internal Revenue Code, Section 1607 (c) (10) (A) exempts—

> Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—
>
> (i) the remuneration for such service does not exceed $45, or
>
> (ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university.

The unemployment compensation laws of the following States do not contain such an exemption:

Colorado	Missouri	Oregon
Connecticut	Montana	Rhode Island
Delaware	Nevada	Tennessee
District of Columbia	New Hampshire	Vermont
Idaho	New Jersey	Washington
Iowa	New Mexico	West Virginia
Kansas	New York	Wisconsin
Kentucky	North Carolina	Wyoming
	Oklahoma	

5. Internal Revenue Code, Section 1607 (c) (10) (B), exempts—

Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1).

The unemployment compensation laws of the following States contain no such exemption:

Arkansas	Missouri	Oklahoma
Colorado	Montana	Rhode Island
Delaware	Nevada	Tennessee
District of Columbia	New Hampshire	Texas
Idaho	New Jersey	Vermont
Iowa	New Mexico	Washington
Kansas	New York	West Virginia
Kentucky	North Carolina	Wyoming
	Ohio	

The following States contain this exemption but in a somewhat modfied form: Connecticut, Minnesota, Oregon.

6. Internal Revenue Code, Sections 1607 (c) (10) (C) and (D), exempts—

> Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;
>
> Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

The unemployment compensation laws of the following States contain no such exemption:

Arkansas	Kentucky	Oregon
Colorado	Missouri	Rhode Island
District of Columbia	Montana	Tennessee
	Nevada	Texas
Illinois	New Mexico	Vermont
Iowa	New York	Washington
Kansas	Oklahoma	West Virginia

7. Internal Revenue Code, Section 1607 (c) (10) (E), exempts

> Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition).

Internal Revenue Code, Section 1607 (c) (13), exempts

> Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

No such exemptions are contained in the unemployment compensation laws of the following States:

Delaware	Nevada	Utah
District of Columbia	New Hampshire	Vermont
Kansas	North Carolina	Washington
Montana	Oregon	West Virginia
	Tennessee	Wyoming

8. Internal Revenue Code, Section 1607 (c) (11), exempts

> Service performed in the employ of a foreign government (including service as a

consular or other officer or employee or a nondiplomatic representative)

Internal Revenue Code, Section 1607 (c) (12), exempts

> Service performed in the employ of an instrumentality wholly owned by a foreign government—
>
> (A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and
>
> (B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

No such exemptions are contained in the unemployment compensation laws of the following States:

Colorado	Kentucky	Oregon
Connecticut	Mississippi	Pennsylvania
Delaware	Montana	Rhode Island
District of Columbia	Nebraska	Tennessee
Georgia	Nevada	Vermont
Iowa	New Hampshire	Virginia
Idaho	New Jersey	Washington
Illinois	New York	West Virginia
Kansas	North Carolina	Wisconsin
	North Dakota	Wyoming

9. Internal Revenue Code, Section 1607 (c) (14), exempts

> Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

This exemption is not contained in the unemployment compensation laws of any of the following States:

California	Nevada	West Virginia
Connecticut	New York	Wisconsin
Idaho	Oregon	Wyoming
Iowa	Rhode Island	
Montana	Vermont	

This exemption is contained in the unemployment compensation laws of the following States but in a somewhat modified form: Colorado, Indiana, Michigan, Ohio, South Carolina, Tennessee, Washington.

10. Internal Revenue Code, Section 1607 (c) (15), exempts

> Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

The unemployment compensation laws of the following States do not contain any such exemption:

California	Montana	Tennessee
Delaware	New Jersey	Vermont
Idaho	New York	West Virginia
Iowa	Rhode Island	

U. S. GOVERNMENT PRINTING OFFICE: 1943

SUPREME COURT OF THE UNITED STATES.

Nos. 722 and 723.—October Term, 1942.

Standard Dredging Corporation, Appellant,
722 *vs.*
Michael J. Murphy, Acting Industrial Commissioner of the State of New York.

International Elevating Company, Appellant,
723 *vs.*
Michael J. Murphy, Acting Industrial Commissioner of the State of New York.

On Appeals from the Supreme Court of New York, Appellate Division, Third Department.

[May 24, 1943.]

Mr. Justice Black delivered the opinion of the Court.

The issue in these cases is whether the New York Unemployment Insurance tax may be collected from employers of certain employees engaged in maritime employment on the wages of those employees. The New York Act levies a payroll tax on all employers of four or more persons, with exceptions not here material, and the sum thus collected is paid into a general fund for the benefit of all unemployed persons covered.[1] The employee in 722 is an assistant cook on a dredge, and the employee in 723 is a grain worker on a floating elevator. The vessels on which both employees served were engaged primarily on work in the waters of the state of New York during the tax period. The appellants challenge the validity of the statute as applied on two grounds: (1) imposition of the tax on maritime employees violates Article 3, § 2 of the Constitution, which gives federal courts exclusive admiralty jurisdiction; (2) Congress has declared either expressly or by implication that no such tax shall be imposed on maritime employers. No other questions of jurisdiction to tax are before us. The

[1] For a description of the New York act see Chamberlain v. Andrews, 271 N. Y. 1, 299 U. S. 515.

New York Court of Appeals overruled both these contentions[2] and the cases are here on appeal under § 237(a) of the Judicial Code.

In approaching this problem, we may put aside two questions at the beginning. It is contended that these two employees are not "members of a crew" and hence are outside the scope both of admiralty jurisdiction and of the relevant statutes.[3] In the view we take, it is immaterial whether or not the employees are crew members. We also need not consider whether these taxes affect interstate or foreign commerce, since Congress has expressly provided that a state shall not be prohibited from levying the tax because the employer is engaged in interstate or foreign commerce, 26 U. S. C. 1600; *Perkins* v. *Pennsylvania,* 314 U. S. 586. The added contention that a vessel's federal license may bar state taxation is only another form of the argument that the tax burdens interstate commerce,[4] and need not be considered separately.

That the state is vested with power to impose taxes in general upon employers to alleviate unemployment, and that the authority of the state is in no wise impaired by reason of blending the imposition of a tax with the relief of unemployment has already been decided by this Court. *Carmichael* v. *Southern Coal Co.,* 301 U. S. 495; *Steward Machine Co.* v. *Davis,* 301 U. S. 548. In a series of cases, however, beginning with *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, this Court called attention to the necessity of uniformity in certain aspects of maritime law, and invalidated several state workmen's compensation acts as applied on the ground that their enforcement would interfere with that essential uniformity. We are now asked to apply the *Jensen* doctrine to the field of unemployment insurance and to invalidate the statute before us on the ground that it is destructive of admiralty uniformity. The effect on admiralty of an unemployment insurance program is so markedly different from the effect

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[2] 289 N. Y. 119.

[3] The employees here, because of the nature of their work, are arguably not within the scope of that portion of admiralty jurisdiction which has been said to be necessarily exclusive. Cf. Davis v. Department of Labor, 317 U. S. 249. On the other hand, certain decisions of the Bureau of Internal Revenue might provide the basis for contention that these employees are "members of a crew" within the meaning of the federal act. As to whether a dredge is a vessel, see S. S. T. 78, C. B. 1937-1, 408; as to whether a floating grain elevator is a vessel and whether a grain processer is a member of a crew, see S. S. T. 194, C. B. 1937-2, 427; S. S. T. 210, C. B. 1937-2, 429.

[4] Counsel refers us to Gibbons v. Ogden, 9 Wheat 1; Hall v. De Cuir, 95 U. S. 485; Moran v. City of New Orleans, 112 U. S. 69; Helson v. Kentucky, 279 U. S. 245; Southern Pacific Co. v. Gallagher, 306 U. S. 167.

which it was feared might follow from workmen's compensation legislation that we find no reason to expand the *Jensen* doctrine into this new area. Indeed, the *Jensen* case has already been severely limited,[5] and has no vitality beyond that which may continue as to state workmen's compensation laws. Cf. *Parker* v. *Motor Boat Sales*, 314 U. S. 244.

Granting that the federal government might choose to operate its own uniform unemployment insurance system for maritime workers if it chose,[6] "Uniformity is required only when the essential features of an exclusive federal jurisdiction are involved." *Just* v. *Chambers*, 312 U. S. 383, 392. When state compensation laws began to provide a remedy for maritime torts, it was at least arguable that the state remedy interfered with the existing admiralty system of relief through actions such as maintenance and cure. But in dealing with unemployment insurance "exclusive federal jurisdiction" is not affected at all. Congress retains the power to act in the field, and in the meantime, federal courts have nothing to do with it. No principle of admiralty requires uniformity of State taxation. Taxes on vessels and other business activities of operators have previously been upheld.[7] We hold that nothing in Article 3, § 2 of the Constitution places this tax beyond the authority of the State.

The second contention is that the federal Act precludes coverage of these employers by the state. Title 9 of the Federal Social Security Act (26 U. S. C. § 1600-11) taxes employers of eight or more employees but provides for a 90% credit against this federal tax for payments made into a state unemployment fund approved by the federal government. 26 U. S. C. § 1607 exempts from this federal tax certain types of employers of persons including those employed "as an officer or member of the crew of a vessel on the navigable waters of the United States." We do not believe that the exemption of these employers from the federal Act can operate to exempt them from state unemployment insurance taxes. The federal Act, from the nature of its ninety per cent credit device, is obviously an invitation to the states to enter the

[5] Just *v.* Chambers, 312 U. S. 383; Davis *v.* Department of Labor, *supra*, and, for an account of the development of the Jensen doctrine, 252, 253.

[6] Cf. 46 U. S. C. § 688 (the Jones Act, dealing with recovery for injuries by seamen); 33 U. S. C. §§ 901-950 (the Longshoremen's and Harborworkers' Act, dealing with recovery for injuries by longshoremen and harborworkers).

[7] Southern Pacific Co. *v.* Kentucky, 222 U. S. 63; Old Dominion Steamship Co. *v.* Virginia, 198 U. S. 299.

field of unemployment insurance, *Buckstaff* v. *McKinley*, 308 U. S. 358, 363, but the absence of an invitation as to employers of maritime workers is not to be construed as a barrier to state action. These employers appear to have been exempted from the federal Act because of certain administrative difficulties involved in their coverage, and because of some doubt that states could, under the *Jensen* line of cases, constitutionally enter this field;[8] but we are pointed to nothing in the legislative history of the Act which indicates that Congress meant to forbid a state from risking the possible constitutional barriers to state coverage, and undertaking the difficult administrative task. The legislative history of other exemptions may indicate that they were intended to oust the states of jurisdiction—on this question we need express no opinion now; but current administrative practice under the Act indicates that there is nothing in the mere existence of a federal exemption which necessarily required that states not undertake to expand the social security program in this field. The federal Act covers only employers of eight or more persons; approximately one-half the states cover employees with fewer employees. Several states cover casual laborers and domestic servants, both groups exempted by the section of the federal Act which includes the exemption of maritime workers.

Employers of maritime workers, otherwise subject to state unemployment insurance taxing acts, are not excluded from the coverage of such acts either by Article 3, § 2 of the Constitution, or by Congressional enactments.

Affirmed.

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[8] The provision exempting officers and members of crews from the federal unemployment insurance tax are similar to those in Titles II and VIII of the Social Security Act, dealing with the old age retirement pensions. Cf. 53 Stat. 1384, repealing the exemption as to certain maritime workers for old age retirement purposes. The Report of the Ways and Means Committee of the House of Representatives on the original Act indicates that the exception was based on the anticipation of administrative difficulties. House Report 615, 74th Cong., 1st Sess., 33. There was also some fear of possible constitutional objection to state coverage of maritime employees. See statements of Rep. Vinson and Rep. McCormack, 79 Cong. Rec. 5903.